



## Senate

General Assembly

**File No. 762**

January Session, 2009

Substitute Senate Bill No. 1158

*Senate, April 21, 2009*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING FORECLOSURE PROCEDURES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 49-31l of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2009*):

4 (a) Prior to July 1, 2010, when a mortgagee commences an action for  
5 the foreclosure of a mortgage on residential real property with a return  
6 date on or after July 1, 2008, the mortgagee shall give notice to the  
7 mortgagor of the foreclosure mediation program established in section  
8 49-31m by attaching to the front of the foreclosure writ, summons and  
9 complaint that is served on the mortgagor: (1) A copy of the notice of  
10 the availability of foreclosure mediation, in such form as the Chief  
11 Court Administrator prescribes, and (2) a foreclosure mediation  
12 request form, in such form as the Chief Court Administrator  
13 prescribes.

14 Sec. 2. Section 49-15 of the general statutes is repealed and the

15 following is substituted in lieu thereof (*Effective October 1, 2009*):

16 (a) (1) Any judgment foreclosing the title to real estate by strict  
17 foreclosure may, at the discretion of the court rendering the [same]  
18 judgment, upon the written motion of any person having an interest  
19 [therein] in the judgment, and for cause shown, be opened and  
20 modified, notwithstanding the limitation imposed by section 52-212a,  
21 upon such terms as to costs as the court deems reasonable, [; but]  
22 except that no such judgment shall be opened after the title has become  
23 absolute in any encumbrancer unless all parties agree to open such  
24 judgment in accordance with subdivision (2) of this subsection.

25 (2) Upon agreement of all parties, a judgment may be opened after  
26 title has become absolute in any encumbrancer, provided (A) such  
27 judgment may not be opened more than four months after title has  
28 become absolute in any encumbrancer, and (B) all rights and interests  
29 of the parties are restored to the status that existed on the date of the  
30 judgment.

31 (b) Upon the filing of a bankruptcy petition by a mortgagor under  
32 Title 11 of the United States Code, any judgment against the mortgagor  
33 foreclosing the title to real estate by strict foreclosure shall be opened  
34 automatically without action by any party or the court, provided, the  
35 provisions of such judgment, other than the establishment of law days,  
36 shall not be set aside under this subsection, [; but] except that no such  
37 judgment shall be opened after the title has become absolute in any  
38 encumbrancer or the mortgagee, or any person claiming under such  
39 encumbrancer or mortgagee. The mortgagor shall file a copy of the  
40 bankruptcy petition, or an affidavit setting forth the date the  
41 bankruptcy petition was filed, with the clerk of the court in which the  
42 foreclosure matter is pending. Upon the termination of the automatic  
43 stay authorized pursuant to 11 USC 362, the mortgagor shall file with  
44 such clerk an affidavit setting forth the date the stay was terminated.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>July 1, 2009</i>	49-311(a)
Sec. 2	<i>October 1, 2009</i>	49-15

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes technical and clarifying changes that have no fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None*Sources: Public Hearing Testimony*

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**OLR Bill Analysis****sSB 1158*****AN ACT CONCERNING FORECLOSURE PROCEDURES.*****SUMMARY:**

This bill permits strict foreclosure judgments to be reopened under certain circumstances.

Under current law, at any time before title has vested in the redeeming party, any judgment foreclosing the title to real estate by strict foreclosure may, at the discretion of the court rendering the judgment, upon the written motion of any person having an interest in the judgment, and for cause shown, be opened and modified, upon whatever terms as to costs the court deems reasonable. The bill authorizes that court to reopen the judgment after title vests if:

1. all parties to the foreclosure agree,
2. it is reopened within four months after title has vested, and
3. all rights and interests of the parties are restored to the status that existed on the date of the judgment (see BACKGROUND).

Also the bill makes a technical change regarding the service of process in a mortgage foreclosure on residential real estate by specifying that the required notice concerning the foreclosure mediation program be attached to the front of the writ, summons, and complaint that is served on the property owner in a foreclosure. Current law appears to require that the notice be attached to the front of the complaint. The writ and summons are separate documents and are presented on top of the complaint, which is on a separate document, when served on the property owner.

EFFECTIVE DATE: October 1, 2009 except the technical change

takes effect July 1, 2009.

## **BACKGROUND**

### ***Strict Foreclosure***

There are two types of foreclosure. One is called strict foreclosure and the other is foreclosure by sale.

In a strict foreclosure the party bringing the foreclosure (the plaintiff) must give the property owner and every person who has a mortgage, lien, or other recorded encumbrance on the property an opportunity to pay off what is owed the foreclosing party and take title to the property. This is called redeeming the plaintiff's interest in the property. If the property owner does not redeem, the plaintiff must give every other person who has a mortgage, lien, or other recorded encumbrance on the property, in inverse order of priority, the chance to redeem. The redeeming party takes title subject to any encumbrance that has priority over his.

In foreclosure by sale, the court orders the sale of the foreclosed property and applies the proceeds to the amount owed the foreclosing party. Any excess amount generated by the sale is applied to debts owed other parties and any balance is given to the debtor property owner.

Most often, foreclosure by sale is used when the owner has substantial equity in the property and strict foreclosure is used when the owner's equity levels are small. Before the property is sold or the title transferred, the borrower has the opportunity to redeem the property by paying the debt due plus interest and costs (CGS § 49-20).

### ***Related Statute***

By law, any judgment rendered in the Superior Court may be set aside, within four months following the date on which it was rendered, and the case reinstated on the docket, on such terms regarding costs as the court deems reasonable. It is done so upon the complaint or written motion of any party or person harmed by it, showing (1) reasonable cause or (2) that a good cause of action or

defense existed at when the judgment was rendered, and that the plaintiff or defendant was prevented by mistake, accident, or other reasonable cause from prosecuting the action or making the defense (CGS § 52-212).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea    42    Nay   0    (04/03/2009)